IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 34421 of 2006(W)

AGAINST THE ORDER ISSUSING ARREST WARRANT DT. 23/11/2006 PASSED BY MUNSIFF COURT,-II ALAPPUZHA (EXECUTION COURT) IN EP.92/2005 IN OS.387/2000

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PETITIONER:

VARGHESE JOSEPH @ SIBI, AGED 37 YEARS,
S/O. JOSEPH, RESIDING AT THAYYIL,
THATHAMPALLY P.O., ALAPPUZHA,
ALAPPUZHA DISTRICT.

BY ADV. SRI.MANJU ANTONEY

RESPONDENTS:

SIDHIQUE ISMAIL, AGED ABOUT 36 YEARS,
S/O. ISMAIL, SHERIN MANZIL,
CHURCH ROAD, ALAPPUZHA, ALAPPUZHA DISTRICT.

BY ADV. SRI.GOKUL DAS V.V.H.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 34421/2006 W

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE EP NO. 92/05 IN OS NO. 387/000 BEFORE THE MUNSIFF COURT, -II, (EXECUTION COURT), ALAPPUZHA DT. 8/4/2005.

EXT.P2. COPY OF THE OBJECTIONS FILED BY THE PETITIONER DT. 1/3/2006.

EXT.P3. COPY OF THE ADDL. AFFIDAVIT FILED BY THE RESPONDENT DT. 26/7/2006.

EXT.P4. COPY OF THE ORDER DT. 19/08/2005 PASSED BY THE HONOURABLE COURT IN CRP NO. 1250/2002.

EXT.P5. COPY OF THE RECEIPT ISSUED FROM THE CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA DT. 15/10/2005.

EXT.P6. COPY OF THE ORDER IN EP NO. 92/05 IN OS NO. 387/00 DT. 23/11/2006 BY ADDL. MUNSIFF COURT, ALAPPUZHA (EXECUTION COURT)

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE DETAILED PROOF AFFIDAVIT DT. 6/7/2006 FILED BY RESPONDENT BEFORE THE MUNSIFF COURT, ALAPPUZHA.

True copy

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M.N.KRISHNAN, J

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W.P.(C) No.34421 OF 2006

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Dated this the 30th day of May, 2007

JUDGMENT

This writ petition is filed seeking to quash the order of arrest in E.P.No.92 of 2005. Heard learned counsel for the writ petitioner and perused the documents. At the outset, I may like to state that the learned Munsiff has written a cryptic order without complying with the mandate of Order XXI Rule 38 or Rule 40. In order to send a person to civil prison, the court has to satisfy that the judgment debtor has got sufficient means to pay and he is willfully neglecting or refusing to pay the amount. If these conditions are satisfied, then only the judgment debtor can be ordered arrest.

2. I have perused the counter statement filed by the judgment debtor wherein he contends that he is not having any means and he has further contended that he had already paid Rs.30,000/- in a connected 138 matter which has to be adjusted towards the decree debt. Learned Munsiff has not considered any of these points. Therefore the order suffers from serious infirmity and therefore the order dated 23.11.2006(Ext.P6) is set aside and

the matter is remitted back to the executing court to consider the matter afresh after affording an opportunity to the judgment debtor as well as the decree holder to adduce evidence in support of their contentions and dispose of the matter in accordance with law.

Parties are directed to appear before the executing court on 4.7.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-